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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children in armed
conflicts
Third session
Geneva, 20-31 January 1997

Provisional agenda

1. Election of officers.

2. Adoption of the agenda.

3. Elaboration of a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, in accordance with resolution 1996/85 of the Commission on Human Rights.

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Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the
Child on involvement of children
in armed conflicts
Third session
Geneva, 20-31 January 1997

# COMMENTS ON THE REPORT OF THE WORKING GROUP

## Report of the Secretary-General

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## Introduction

1. In paragraph 13 of its resolution 1996/85 of 24 April 1996, entitled "Rights of the child", the Commission on Human Rights requested the Secretary-General to transmit the report of the working group on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (E/CN.4/1996/102) to Governments, relevant specialized agencies and intergovernmental and non-governmental organizations, the International Committee of the Red Cross, and the expert appointed by the Secretary-General to undertake a study on the impact of armed conflicts on children, and to invite their comments thereon in time for circulation prior to the next session of the working group.

2. Pursuant to that resolution, the Secretary-General, on 21 August 1996, addressed requests to Governments, specialized agencies and intergovernmental and non-governmental organizations concerned, the International Committee of the Red Cross, and the expert appointed to undertake a study on the impact of armed conflicts on children for comments on the report of the working group on its second session.

3. By 2 December 1996, replies had been received from the following States: Austria, Cape Verde, Cuba, Mexico, Nicaragua, Sweden, Syrian Arab Republic, Ukraine.

4. Replies were also received from the Division for the Advancement of Women, the Economic Commission for Latin America and the Caribbean, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees, the United Nations University, the United Nations Educational, Scientific and Cultural Organization, the Council of Europe, the Organization for Economic Cooperation and Development, the Organization of African Unity, the International Committee of the Red Cross and Interpol.

5. Comments were submitted by the Arab Organization for Human Rights, the Friends World Committee for Consultation (Quakers) and the International Confederation of Free Trade Unions.

6. The present report contains a summary of the substantive replies received. It also includes information submitted by the Government of Panama and by Education International pursuant to Commission on Human Rights resolution 1995/79, received after the preparation of documents E/CN.4/1996/WG.13/2 and Add.1.

7. Any additional replies will be reproduced in an addendum to the present document.

# I. COMMENTS RECEIVED FROM STATES

## Austria

[Original: English]
[26 September 1996]

1. Austria appreciates the regulations envisaged in the present Optional Protocol. However, in order to comply as much as possible with its pursuits, the drafting of volunteers who have not yet completed the age of 18 has to continue to be permitted. According to a provision of the 1990 Austrian Military Service Act volunteering for military service is not dependent on the consent of the person having parental power. Otherwise, drafting under the present draft Protocol would only be possible with the consent of the parents or persons having parental powers, a fact that already gave rise to difficulties in the past before the relevant paragraph was inserted. The second part of article 2, paragraph 3 should be deleted and article 2, paragraph 3 should therefore read "States Parties shall ensure that every person who chooses to enlist into their armed forces before reaching the age of 18 does so of his or her own free will".

2. Moreover, it has to be ensured that it will still be possible in future to call up soldiers under 18 for participation in disaster relief operations. In addition, it needs to be noted that in the case of operations of the Federal Armed Forces in disaster relief operations it can be ensured that within the framework of appropriate organizational measures soldiers under 18 are discharged from the Federal Armed Forces or are assigned to units which are not in charge of such operations.

## Mexico

[Original: Spanish]
[13 November 1996]

1. With regard to the situation of minors in armed conflicts and their participation in armed forces, in the case of Mexico it may be stated in general that the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, which has been analysed by the working group of the Commission on Human Rights, does not run counter to the spirit of the National Military Service Act and Regulations, since both consider in clear and specific terms the cases in which minors may enlist voluntarily for military service, without being obliged to serve actively.

2. In specific terms, it should be noted that articles 5, 31.I, 34.I and 35.IV of the Constitution of the United Mexican States provide that public service in the armed forces is compulsory; that it is an obligation for Mexicans to receive military instruction making them fit to exercise the rights of citizens skilled in the handling of weapons and proficient in military discipline; that males who are Mexicans and have reached 18 years of age shall be considered to be citizens of the Republic and that it is a prerogative of those persons to bear arms in the armed forces for the defence of the Republic and its institutions.

3. In addition, articles 5 and 149 of the Mexican Army and Air Force Organization Act state that members of the Army and Air Force under the Constitution may be engaged in voluntary military service or national military service and that the recruitment of troops is to be effected by conscription or by voluntary enlistment with applicants being selected on the conditions stipulated in the respective contracts of recruitment.

4. Furthermore, article 646 of the Civil Code for the Federal District relating to matters under ordinary jurisdiction and for the whole Republic relating to matters under federal jurisdiction sets the age of majority at 18 years and article 5 of the Military Service Act states that "military service shall be performed for one year in the active Army by those who have reached 18 years of age".

5. It follows from the interpretation of the above-cited constitutional and statutory provisions that in Mexico the procedures for recruitment for military service in the armed forces are conscription through "national military service" and "voluntary military service".

6. National military service serves to enrol personnel in the armed forces, is instituted by constitutional declaration contained in the fourth paragraph of article 5 of the Constitution of the United Mexican States, which provides that the only public service which may be compulsory, under the terms of the respective laws, is military service, which requires all the country's inhabitants to assist in the defence of the fatherland. In this regard, it should be pointed out that national military service has followed the same path as the army for manning purposes, calling in particular on all able-bodied males reaching the age determined by law temporarily to form part of the nation's armed forces.

7. This type of military service is regulated by the National Military Service Act and Regulations, which in articles 4 and 5 provide that the preliminaries for enlistment of each class for service in the armed forces are to be completed during the second half of the year in which the individuals concerned attain the age of 18 years, so that they begin their military service on 1 January of the following year, and that their military obligations end on 31 December of the year in which they reach the age of 45 years.

8. In this same connection, article 25 of the National Military Service Act states that enrolling before call-up for active service is possible only for those persons who wish to leave the country at the time when they would normally be required to serve, if they are over 16 years of age when applying to enlist, and for those who need to do so because of their studies. Articles 40, 44, 45, 46, 47 and 48 of the Regulations of the Military Service Act state that Mexicans over 16 years of age who for reasons of study or travel abroad at the time when they are liable to service wish to enrol in advance for active units must apply to the Central Recruitment Office, giving their personal information (name and surnames of father and mother, date and place of birth, whether Mexican by birth or naturalization, domicile, level of studies, civil status and occupation) together with the authorization of whoever exercises paternal authority or guardianship. The Act allows the Ministry of Defence to fix annually the maximum number of persons who may

enrol in advance, when the next intake is drawn by lot, provided that they have passed the required medical examination; certification of student status is also required for Mexicans who for reasons of study wish to be recruited in advance into active units.

9. In particular, articles 34 and 35.IV of the Constitution of the Republic define as Mexican citizens males and females who are Mexican and also have reached 18 years of age, and state that it is a prerogative of the Mexican citizen to bear arms in the armed forces for the defence of the Republic and its institutions, under the terms established by law.

10. It follows from the above that voluntary military service is founded on this right and the qualities cited, which are recognized as belonging solely and exclusively to Mexican citizens.

11. Thus, article 24 of the Military Service Act states that volunteers may be admitted to active service, up to the point where the quota fixed annually by the Ministry of Defence is filled, if they: (i) submit an arplication; (ii) are Mexican over 18 years and under 30 years of age, or up to 40 for specialist army personnel, persons under 18 and over 16 being admissible in transfer units for training as technicians, subject to a contract with the State which must not exceed 5 years; and (iii) are single, widowed or divorced with no children.

12. Furthermore, article 107 of the Regulations of the Military Service Act establishes that individuals volunteering to join troop units in the army must submit an application, minors having to provide the written consent of their parents or guardians, and must be Mexican by birth or naturalization, be over 18 and under 30 years of age, be single, widowed or divorced with no children.

13. The personnel recruited through voluntary military service may be of two kinds: (a) those contracting to join the army or navy ranks, as explained in the preceding paragraphs, whose contract of recruitment is made out for three years, and (b) those entering military educational institutions for training courses, whose time of service must be as stipulated by the Act on the Organization of the Mexican Army and Air Force or of the Mexican Navy, as appropriate, such personnel constituting the permanent professional nucleus of the armed forces providing officers, chiefs and generals, subject to an application from the persons concerned and the consent of their parents or those legally responsible for them, for reasons that are purely and exclusively educational or relating to military instruction for the future, without this meaning that they are being trained for later intervention in wars or international conflicts.

## Nicaragua

[Original: Spanish]
[1 October 1996]

1. In article 1 of the draft protocol the word "persons" should be replaced by the word "children". Article 1 should not include the words "a direct".

Obligations of States parties

2. Article 2 should not contain phrases such as "The States Parties shall ensure", but should instead read "... shall guarantee" no compulsory and/or voluntary recruitment of children under 18 years of age. Paragraphs 2 and 3 of article 2 of the draft protocol should be deleted.

3. We support retention of the new article concerning measures to be taken for the physical and psychological rehabilitation and social reintegration of any child who is a victim of armed conflict. We support paragraphs 1 and 2 of the new article.

4. Article 4. We support the wording "No reservation is admissible to the present Protocol".

5. New article 1. We support in general the procedure established.

6. General comments

(i) Direct or indirect participation in conflict: Qualifiers of participation in conflict should not be used, and instead non-participation of any kind in armed conflicts should be guaranteed.

(ii) Definition of the child: The definition of the child contained in article 1 of the Convention on the Rights of the Child should be retained.

(iii) Age of recruitment: No child under 18 should be subject to voluntary or compulsory recruitment into armed services.

(iv) Voluntary enlistment: Voluntary enlistment should not be allowed for children under 18.

(v) Recruitment by armed groups: The State must take every step to guarantee that children under 18 are not recruited in armed conflict, into regular or non-regular groups, or both.

(vi) Recruitment for military academies: It should be guaranteed by every means that children between 15 and 18 in military study programmes will not be involved in armed conflicts.

7. The protocol must:

Set precise rules for the protection of children in armed conflicts;

Be strictly binding on signatory and ratifying States;

Be a source for the adaptation of internal laws which are at present contrary to the spirit of the protocol.

## Panama

[Original: Spanish]
[16 February 1996]

Comments

1. The term "child" used in article 1 of the Convention on the Rights of the Child is equivalent to the term "minor", which is employed in the Family Code of the Republic of Panama to mean every human being from conception to the age of 18 years.

2. In this submission, the term "adolescent" means every human being from the age of puberty to the age of 18 years.

3. Panama recognizes and respects international humanitarian law and shares the will of States to establish mechanisms designed to promote and strengthen the rights of the child, in this case focusing on children who, voluntarily or not, are involved in acts of war and become the obvious victims or silent witnesses of such events, which have pervasive effects on their physical, social and family lives.

4. In Panama the norms enshrining the rights of the child in hostilities or armed conflicts are consistent with the treatment of the norms of international humanitarian law, formulated in legal terms in a series of obligations which as a result afford protection of human rights, in this particular case applying to children and adolescents.

5. It is important to note that events such as the invasion of Panama in 1989 show that this type of act of aggression jeopardizes peace and peaceful coexistence within a nation and consequently claims countless victims among the civilian population, especially children.

6. Mechanisms like the present draft protocol must serve as a tool for embodying in international law the obvious need to set up committees of inquiry that would take responsibility together with Governments for the preparation of national reports determined to present the true facts and statistical data reflecting the truth. Biased arguments or concealment of information hamper detection of rights that have been violated, the needs which arise and, therefore, adequate legal, medical and educational treatment.

7. In addition to claims of an exclusively material kind, besides moral and psychological injury, humanitarian aid and the need for the overall rehabilitation and social reintegration of victims of war must not be neglected.

8. The draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts highlights the undeniable truth that minors are involved in armed conflicts notwithstanding their wishes. They may be participating actively or passively, and recruited on a voluntary or non-voluntary basis, by the State or by forces on the margins of the State. In States where this situation obtains, those legal instruments which exist will need to be reviewed to determine whether they are appropriate. In case

of internal strife it is important to build effective mechanisms and develop legislation inspired by the Convention on the Rights of the Child aimed at the application of humanitarian law. This means recognizing special protection for children involved as actors or victims in armed conflicts.

9. In Panama the army is proscribed and consequently in practice there is no recruitment as a means of preparing for defence. Nevertheless, article 306 of the Constitution provides that all Panamanians are obliged to bear arms to defend the national independence and territorial integrity of the State.

10. Panama approved the Convention on the Rights of the Child by Act No. 15 of 6 November 1990. Articles 38 and 39 of that Act contain provisions requiring the special treatment of children in armed conflicts. Furthermore, the Act reaffirms the principle that any decision to be taken by the State affecting children and adolescents must be aimed at securing the best interests of the minor, as well as the obligation on the part of the State to take appropriate steps to promote the physical and psychological rehabilitation and social reintegration of all children who are victims, inter alia, of armed conflicts.

11. Through the provisions of the Constitution, Panama clearly observes the rules of international law calling for special protection of children involved in hostilities or armed conflicts. However, it recognizes that there may be legal or procedural lacunae in its positive law. Panama is a country which has lived through such experiences, but laws with specific forms of treatment have not been enacted and it therefore supports efforts to provide suitable mechanisms emphasizing the existence of special conflict situations requiring norms that can be incorporated in the domestic law of every country.

12. The recommendations and comments which Panama wishes to make on the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts are as follows:

First. It supports the proposal to maintain education within the concept of minority and the limit accepted as a condition for direct participation in armed conflicts, hostilities or other acts of that nature (art. 1 of the draft).

Second. It supports the definition of a minimum age for recruitment, notwithstanding the wishes of the minor or of his or her guardians, taking into consideration the principle of the best interests of the child and the obligation of the State to give effect thereto in its decision-making (art. 2 of the draft).

Third. Emphasis should be given at the domestic level to efforts by the State to develop a comprehensive social policy aimed at minimizing the physical and psychological effects suffered by children who are victims of armed conflicts, including invasion or any other similar act, with a view to their social reintegration.

Drafting proposal: States parties shall adopt the necessary measures for the child's physical and psychological rehabilitation and social

integration, as well as safeguards of his or her special human rights as a child, with emphasis, inter alia, on medical care and adequate nutrition.

Fourth. Within the framework of the discussions, observations and comments on the draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, it would be appropriate to call for stronger international cooperation in peacetime for the interchange of information and machinery dealing with the special rights to be protected under this instrument. In addition, procedural formulas should be developed and incorporated to permit action by the Committee on the Rights of the Child, together with governmental bodies, to guarantee that States comply or require compliance with the minimum safeguards for minors (arts. 4 and 5 of the draft).

Fifth. Panama recommends the inclusion of provisions, as very special legislation, that are directed at committing States to social policy allocating greater budgetary resources to finance institutions for the physical and psychological rehabilitation of children who are victims of armed conflicts, and supports efforts to implement State social policy giving concrete form to the real will of Governments.

Sixth. It also recommends facilitating the adaptation of domestic legislation to the humanitarian and human rights orientation of the Convention on the Rights of the Child and the draft protocol. In addition, it urges States to permit non-governmental participation in the preparation of reports of investigations into such cases of armed or similar conflicts as may arise in order to guarantee the objectivity of the information and a greater role for the national committees on the rights of the child, without prejudice to sovereign authority.

Seventh. The express recognition of special rights for children and adolescents affected by armed conflicts, who need special treatment above the rest of those affected, is required.

Eighth. Panama notes the lack of reference to the observance and effective realization of the rights of children who as a consequence of armed conflicts acquire the status of refugees (art. 22 of the Convention), in matters such as health care, education, etc., and in particular the responsibilities of the receiving State and international institutions.

## Sweden

[Original: English]
[30 October 1996]

1. Sweden wishes to emphasize the importance it attaches to avoiding the involvement of children in armed conflicts and therefore welcomes the efforts to finalize the draft protocol in time for the fifty-third session of the Commission on Human Rights. The patterns and characteristics of contemporary

armed conflicts, as described by Graca Machel in her study on the impact of armed conflict on children, makes it even more important to prevent the participation of children in armed conflicts.

2. Sweden therefore supports raising the age limit to 18 years for participation in hostilities. The same age limit should also apply to compulsory recruitment into armed forces or recruitment by non-governmental armed groups which are parties to an armed conflict.

Sweden would favour that no reservations would be admissible to the protocol.

Sweden would favour the inclusion of an article in which the Committee on the Rights of the Child is given the mandate to supervise the observance of the optional protocol.

## Syrian Arab Republic

[Original: Arabic]
[1 October 1996]

The Syrian Arab Republic:

1. Agrees that preventive measures are more effective than remedial measures in regard to the protection and promotion of human rights. Accordingly, the Government of the Syrian Arab Republic wishes to emphasize that the text of the optional protocol should indicate that military invasion, foreign occupation, the use or threatened use of force and denial of the right to development and of the right of peoples to self-determination constitute an obstacle to international peace and security and, consequently, to the full enjoyment of human rights.

2. Affirms that the age of enlistment should be over 18 years and agrees that the age for military training should be under 18 at military schools and colleges. It also believes that emphasis should be placed on the need to differentiate between the age of enlistment for military service, in which the recruit is obliged to take part in military operations if they take place, and the age for admission to military schools and colleges in which the cadet, regardless of his age, is not required to participate in military operations.

3. Agrees that the text of the protocol under consideration should refer to the importance of promoting international cooperation in support of the programmes formulated by United Nations bodies and specialized agencies, which should be implemented with a view to ensuring that children enjoy their human rights, particularly by protecting them from poverty, vagrancy and exploitation for illicit purposes.

## Ukraine

[Original: Russian]
[24 October 1996]

1. The drafting of an optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts is an important and timely step.

2. Ukraine agrees with the view of the Committee on the Rights of the Child that persons below the age of 18 should not be directly or indirectly involved in hostilities, nor recruited into armed forces even on a voluntary basis.

3. Since the main purpose of the protocol is to afford the fullest possible protection of children from all forms of involvement in armed conflicts, the absence of any distinction between direct and indirect participation will contribute to ensuring broader protection of children. Account should also be taken of the resolution adopted in December 1995 at the 26th International Conference of the Red Cross and Red Crescent, in which it was recommended that parties to a conflict should "refrain from arming children under the age of 18 years and take every feasible step to ensure that children under the age of 18 years do not take part in hostilities", with no distinction being made between direct and indirect participation. In article 1, therefore, we consider that it would be appropriate to delete the words "a direct" and to keep the age limit at 18 years.

4. In order to preclude use of the provision on voluntary enlistment for military service as a basis for allowing the direct or indirect participation in hostilities of persons under the age of 18 years, we consider that article 2, paragraph 2, should read as follows: "States Parties shall ensure that persons who have not attained the age of 18 years are not voluntarily recruited into their armed forces". Accordingly, in article 2, paragraph 4 (first option), the age limit should be kept solely at 18 years, and the words "are not subject to military training" should be replaced by the words "are not subject to any obligations with respect to participation in hostilities".

5. In new article A, in our opinion, the words "of minors" and in the last clause "which are parties to" should be deleted.

6. We consider the first option for article 4 to be the most acceptable. Regarding the first paragraph of article 8, the word "tenth" should, in our view, be deleted.

## II. COMMENTS SUBMITTED BY UNITED NATIONS BODIES, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL AND OTHER ORGANIZATIONS

### Council of Europe

[Original: English]
[20 October 1996]

1. The draft protocol covers situations where the rights of children come under serious threat and circumstances in which children are particularly exposed to risks for their physical and psychological well-being.

2. Of the various relevant human rights standards of the Council of Europe, the prohibition of torture and inhuman or degrading treatment or punishment laid down in article 3 of the European Convention on Human Rights (ECHR) may be particularly important for the subject-matter of the draft protocol. This article makes no provision for exceptions, and no derogation from it is permissible under article 15 ECHR in time of war or other national emergency. The European Court of Human Rights has accepted that exposure of an individual to a real risk of treatment going beyond the threshold set by article 3 entails a violation of that provision. Here, the basis for State liability is that the State has "taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment" (see the Soering judgement of 7 July 1989, Series A, No. 161, para. 91). Not only treatment causing bodily injury, but also, for example, treatment causing mental suffering and feelings of fear, anguish and inferiority capable of humiliating and debasing the victim and possibly breaking their physical and moral resistance may amount to such proscribed treatment. In determining whether this is so, the Court takes into account all the circumstances of each case. In this respect, the age of the individual concerned has been recognized as a relevant factor (see, for example, the above-mentioned judgement, paras. 100, 108-109 and 111).

3. Seen from this perspective, a protocol on the involvement of children in armed conflicts could make an important contribution to the protection of the rights of children by reducing the risk of their exposure to ill-treatment.

4. Furthermore, a specific comment is submitted concerning the age limits contained in articles 1, 2 and new article A of the draft protocol. Article 7 of the European Social Charter (Turin, 18 October 1961), ratified by 20 member States of the Council of Europe, guarantees the right of children and young persons to protection. Article 7, paragraph 1, sets the minimum age of admission to employment at 15 years. Under paragraph 2 of that article, the Contracting Parties undertake to "provide that a higher minimum age of admission to employment shall be fixed with respect to prescribed occupations regarded as dangerous or unhealthy". On the basis of the case-law of the Committee of Independent Experts set up under article 25 of the European Social Charter, article 7, paragraph 2, has recently been amended in the revised European Social Charter, which was opened for signature on 3 May 1996. Article 7, paragraph 2, now explicitly provides that the Parties undertake to "provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy". In view of the specific nature of military activities, it does not seem

possible that the prescribed age limit be lower than that required for "dangerous or unhealthy" occupations. Therefore, we would suggest that that age limit be fixed at 18 years.

Copies in English and French of the above-mentioned Soering judgement, the European Social Charter and the revised European Social Charter, as well as the publication "Children and adolescents, protection within the European Social Charter" (Social Charter monographs - No. 3), enclosed with the comments submitted by the Council of Europe are available for consultation in the files of the Secretariat.

Organization of African Unity

[Original: English]
[16 October 1996]

1. The General Secretariat of the OAU appreciates United Nations efforts towards drawing up this important document for the benefit of children in difficult circumstances and in particular those involved in armed conflict situations in Africa.

2. The document will be carefully studied and any observations or comments will be transmitted in due course.

United Nations Children's Fund

[Original: English]
[12 November 1996]

1. UNICEF has been following the drafting process of the optional protocol since the beginning and hopes that its contributions will help to strengthen the Convention on the Rights of the Child in this important area. UNICEF fully agrees with the view of the Committee on the Rights of the Child, which has received wide international support, that an optional protocol should strengthen the levels of protection of and respect for the rights of the child.

2. UNICEF's position on this optional protocol is essentially based on the principle of the best interests of the child and includes the following four major recommendations: all forms of participation of children in armed conflict and hostilities should be prohibited; all forms of recruitment (voluntary and compulsory) of children below the age of 18 in armed forces should be prohibited; governmental as well as non-governmental armed forces should be covered by the optional protocol and should comply with these standards; and the voluntary enlistment of children between 15 and 18 in military schools should be allowed (although UNICEF gives priority to civil schools), but only under the condition that such children will not participate, directly or indirectly, in armed conflicts.

3. The report of the Expert of the Secretary-General, Ms. Graca Machel, on the impact of armed conflict on children shed significant light on some practical issues that should be taken into consideration regarding recruitment, voluntary recruitment and indirect participation. In reference

to recruitment, the report shows that in many countries birth registration is inadequate or non-existent and, consequently, countless numbers of children do not know how old they are. As a result of this common problem, recruiters can only guess a child's age based on physical development, and are likely to enter the age of recruits as 18 in order to comply with national laws. More alarming is the practice of arbitrary seizing children from schools and orphanages for recruitment.

4. UNICEF would like to draw the attention of the working group to the importance of prohibiting voluntary recruitment into armed forces. Experience has demonstrated that the distinction between voluntary and compulsory recruitment is very vague and often used to the detriment of children. When children "voluntarily" join armed groups, it is almost always in the midst of chaos and suffering, and in the belief that they will be safer with a gun in their hands. This has been best described as a desperate act, rather than a voluntary act. As the expert's report points out, "the lure of ideology is particularly strong for young adolescents in search of a sense of social meaning".

5. With regard to indirect participation, UNICEF agrees, again, with the position of the Committee on the Rights of the Child that it is very difficult to draw the line between direct and indirect participation. The expert's report likewise indicates that although the tasks that may constitute this type of participation, such as serving as lookouts and messengers, "may seem less life-threatening than others," it has the effect of bringing all children under suspicion. UNICEF therefore supports the view that the optional protocol should not make the distinction between the two forms of participation.

6. The theme of the 1996 UNICEF report, State of the World's Children, is the effects of armed conflict on children. In this report, UNICEF proposes a 10-point Anti-War Agenda in the form of an appeal for global action in order to protect children from armed conflict. The Convention on the Rights of the Child is the guiding force of the Agenda which calls for, inter alia, the prevention of armed conflict, a prohibition on children becoming soldiers, banning land-mines, denunciation of war crimes, children as zones of peace, child impact assessments when sanctions are imposed, and more efforts in emergency relief, rehabilitation and education for peace.

## United Nations Educational, Scientific and Cultural Organization

[Original: French]
[8 October 1996]

1. The report of the working group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts shows the complexity of the problem of protecting children from involvement in wars and the difficulty of establishing legal rules valid for all situations, notwithstanding the general consensus among States to supplement the Convention with this new instrument.

2. The draft protocol prepared by the working group prompts UNESCO to make the following comments and suggestions:

(a) Since the protocol is optional, the provisions for its implementation and the sanctions proposed in new article D of the draft should have more binding and deterrent force to guarantee better observance of the protocol by the signatories.

(b) The protocol does not take sufficient account of situations in countries shaken by widespread inter-communal conflicts and lacking or having ineffective central authorities and institutions, as is the case, for example, in Liberia or Somalia. The risk of the proliferation of conflicts of this kind, which create chaos and where children are in fact the first victims, is great enough today to necessitate a response in the protocol. What action is to be taken in such cases? What process and procedure of ratification should be adopted? How can the Convention and the protocol be applied in these situations? Despite the legal constraints, the protocol should allow for the protection of children in such situations, in particular by providing means for international pressure to be exerted on belligerents involving children by force in hostilities.

(c) The protocol does not attach sufficient importance to (re)education, not only as a condition for peace and the well-being of children but also as a means of turning them away from war and as a remedy for their psychological rehabilitation and social reintegration. The eighth paragraph of the preamble to the protocol could thus be strengthened by recalling the importance of education and, in particular, of urgent education and retraining in the context of assistance to children who are victims of armed conflicts.

(d) The protocol permits voluntary recruitment into the armed forces of persons under 18 years of age, provided that they have the consent of those legally responsible for them. UNESCO suggests that another condition should be stipulated for the observance of children's right to education: an undertaking by the signatory States practising voluntary recruitment of young persons under 18 years of age to ensure a minimum school education for them.

Office of the United Nations High Commissioner for Refugees

[Original: English]
[10 October 1996]

1. UNHCR is most supportive of this draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, which is of direct relevance to us, as children of concern to UNHCR are often affected by recruitment and participation in hostilities in both countries of origin and asylum.

2. UNHCR's primary mandate includes providing international protection to refugees and finding durable solutions to their problems. It is estimated that over 50 per cent of the refugees in the world are children, and of these, many are in or have come from areas of armed conflict. In recent years the Executive Committee of the High Commissioner's Programme and the Office have addressed issues related to refugee children in situations of armed conflict. Because of its experience with refugee children and the effects of their

participation in and exposure to armed conflict, UNHCR has welcomed the opportunities to comment on the optional protocol in its previous drafts, and appreciates this opportunity to make its contribution to the current draft.

3. It is noted that the four areas of concern commented upon by UNHCR previously remain under discussion in the present draft. UNHCR would like to reiterate its comments in regard to these areas, and the reasons for its opinions.

4. With respect to the question of the age of those participating in hostilities (art. 1), UNHCR remains of the view that the minimum age should be designated as 18 years. This is consistent with the age suggested in the Convention (unless the age of majority is lower) and in most national legislation as the widely accepted age of legal majority. UNHCR believes that participation in hostilities is harsh and brutalizing, and that those who have not reached legal majority ought not be exposed to it. Children under 18 years, in UNHCR's view, are not likely to possess the maturity to deal with such experiences.

5. On the issue of direct or indirect involvement (art. 1), UNHCR continues to believe that all participation of those under 18 years should be precluded. In UNHCR's experience, the non-combat participation of children may be just as, or more, dangerous to the child than combat duty and, as has been pointed out in our interventions on this point, the line between "direct" and "indirect" participation is, in practice, both extremely difficult to define and very easy to cross. For many refugee children in particular, the fact of their displacement and the frequent absence of parental or other guidance figures makes them doubly vulnerable to exploitation in this way.

6. With respect to the age of recruitment into the armed forces (art. 2), UNHCR, consistent with the position stated above, insists that the minimum age for either compulsory or voluntary recruitment into the armed forces should be set at 18 years, and does not agree that earlier recruitment should be acceptable with parental consent. In accordance with the position taken with respect to article 1, UNHCR feels that those under 18 are not likely to possess the maturity to assess adequately the significance and consequences of volunteering to serve and, moreover, many will in fact be coerced by factors such as the need for physical protection, lack of food and/or other more subtle manipulations. Refugee children are, of course, particularly vulnerable in this regard because of their displacement and its attendant problems of insecurity.

7. On the issue of recruitment to military educational institutions of those below 18 years, UNHCR remains of the view that in principle civilian education is preferable to military schooling. However, in the interests of accommodating States who would not otherwise support the protocol, UNHCR would support the current article 2.4 with the age stipulation of 18 years for military training.

8. UNHCR strongly supports the inclusion of a clause (new art. A) prohibiting child recruitment by non-governmental armed groups. As noted in our previous comments, most child soldiers are currently serving in non-governmental armed groups, and without such a clause, the optional

protocol would lose much of its force. For the reasons stated above with respect to the minimum age of recruitment and participation in hostilities, UNHCR prefers the wording of the article which specifies the age at 18 years as opposed to referring to minors. For the broadest possible coverage, UNHCR supports the inclusion of armed groups "involved in" an armed conflict as opposed to those "which are parties to" it.

9. Finally, and consistent with our previous comments, if reservations to the protocol are allowed, UNHCR believes there should also be a procedure foreseen for withdrawing reservations.

International Committee of the Red Cross

[Original: English]
[20 September 1996]

1. The International Committee of the Red Cross (ICRC), which is present in the field in many countries affected by armed conflicts, is dismayed to note that more and more children are taking part in hostilities and are caught up in the fighting. Children can easily be manipulated and encouraged to commit acts the gravity of which is beyond their grasp, and experience all kinds of suffering and hardship, not to mention often being captured, wounded or killed. It cannot be overemphasized that the disturbing reality of armed conflicts is that, in many instances, children below the age of 15 years of age take part in hostilities, in breach of existing international standards, both those contained in international humanitarian law instruments and in the Convention on the Rights of the Child.

2. The International Red Cross and Red Crescent Movement has addressed the plight of children in armed conflicts. Resolution 2 of the 26th International Conference of the Red Cross and Red Crescent (Geneva, December 1995), entitled "Protection of the civilian population in period of armed conflict", in its paragraphs C, letters (d) to (f):

> "(d) recommends that parties to conflict refrain from arming children under the age of 18 years and take every feasible step to ensure that children under the age of 18 years do not take part in hostilities;
>
> (e) supports the work being done by the United Nations Commission on Human Rights on the involvement of children in armed conflicts with a view to adopting an optional protocol to the 1989 Convention on the Rights of the Child, the purpose of which is to increase the protection of children involved in armed conflicts;
>
> (f) takes note of the efforts of the Movement to promote a principle of non-recruitment and non-participation in armed conflicts of children under the age of 18 years, and supports its practical action to protect and assist all children who are victims of conflict."

3. The ICRC strongly supports an optional protocol to the Convention on the Rights of the Child prohibiting both the recruitment of children under 18 years of age into armed forces or armed groups and their participation in

hostilities. We hope that States which are still reluctant to take this step will re-examine their position in the light of the fact that children suffer particular hardship during armed conflicts and that a generation of adults marked for life by an experience as child combatants can slow down the development of their society.

4. In January 1996, the ICRC took an active part in the last session of the working group, and expressed its opinion on a series of important points with a view to ensuring harmonization between the draft optional protocol and the principles of international humanitarian law. In this context, the ICRC cautioned the delegations against the danger of lowering the reach of existing norms protecting children. Indeed, the optional protocol is meant to strengthen the levels of protection of the rights of the child.

5. In particular, the ICRC believes that the draft optional protocol should prohibit all forms of participation, whether direct or indirect, by children in armed conflicts. Such a total prohibition is already provided for under international humanitarian law applicable in non-international armed conflicts, namely in Protocol II additional to the 1949 Geneva Conventions. If the draft optional protocol was to prohibit only certain forms of participation, this could weaken the broader provisions of Protocol II. In addition, experience in the field has shown that the distinction between direct and indirect participation is often virtually impossible to ascertain. The draft optional protocol should therefore, in the ICRC's opinion, prohibit all forms of participation by children in armed conflicts, without distinction.

6. Moreover, the ICRC considers it essential that the provisions of the draft optional protocol be respected by "all parties to conflict". Indeed, nowadays most armed conflicts take place not between States, but within States. It is precisely in such situations that children are most at risk. It is therefore crucial that dissident forces or armed groups taking part in internal conflicts also be bound by and respect its provisions. If the scourge of child soldiers is to be eradicated, the rules of international humanitarian law must be respected by all those who are in any way involved in armed conflicts. International humanitarian law applicable in situations of non-international armed conflicts binds all parties to a conflict, without giving a legal status to armed groups.

7. For the reasons outlined above, and for the sake of consistency with international humanitarian law, the ICRC strongly supports the adoption of the second option of new article A (E/CN.4/1996/102, para. 118), as amended by a number of representatives of Governments (para. 119). In the opinion of the ICRC, the draft article should therefore read as follows:

> "All parties in armed conflicts shall respect the provisions contained in articles 1 and 2 of the present Protocol regarding the involvement of children therein in accordance with applicable international humanitarian law. The application of the preceding provision shall not affect the legal status of the parties to the conflict."

## III. COMMENTS SUBMITTED BY NON-GOVERNMENTAL ORGANIZATIONS

### Arab Organization for Human Rights

[Original: English]
[25 September 1996]

1. The Arab Organization for Human Rights (AOHR) fully support this draft optional protocol. The Arab Organization for Human Rights would like to point to violations of children's right in situations where children are used as a way to intimidate their families.

2. The Arab Organization for Human Rights considers this act as a grave violation which needs to be considered by the Commission on Human Rights and suggests that an article should be added to the draft protocol calling Governments and occupation authorities to refrain during hostilities from using children in any way to intimidate their families.

### Education International

[Original: English]
[5 December 1995]

1. Education International supports the initiative to have a protocol which deals with the involvement of children in armed conflict. We believe that age 18 should be the earliest age of recruitment into armed forces.

2. When children have been involved in armed conflict it is essential that States provide the support necessary for reintegration of children into the education system and into society, since the transition is generally traumatic.

### Friends World Committee for Consultation (Quakers) 1/

[Original: English]
[17 October 1996]

1. Many members of the NGO Sub-Group were involved with the study on the impact of armed conflict on children (the Machel study), including undertaking research for it. The single largest area of research undertaken for the study was on child soldiers. This was done under the auspices of the Sub-Group and the results appear in Children: The Invisible Soldiers by Rachel Brett, Margaret McCallin and Rhona O'Shea (Quaker United Nations Office, Geneva, April 1996), published in book form by Radda Barnen, Stockholm, 1996. We note that the study recommends that "States should ensure the early and successful conclusion of the drafting of the optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, raising the age of recruitment and participation in the armed forces to 18 years".

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1/ On behalf of the NGO Sub-Group on Refugee Children and Children in Armed Conflict (a subgroup of the NGO Group for the Convention on the Rights of the Child).

2. The research and field programmes in which the non-governmental organizations are involved inform our responses to the report of the working group on the draft optional protocol. We welcome the progress which has been made so far on the draft optional protocol and the generally positive approach of the working group to seeking to raise the minimum age of recruitment into armed forces and participation in hostilities to 18 years. We also welcome the positive steps which have been taken by some Governments since the last session of the working group. We hope that it will be possible to complete the draft optional protocol at the next session of the working group.

3. We fully support the position of the Committee on the Rights of the Child as stated in the report, "that persons below the age of 18 should not be directly or indirectly involved in hostilities, nor recruited into armed forces, a principle that should also apply in situations of voluntary enlistment ... [and] that in relation to situations of enrolment or enlistment by armed groups other than governmental, the same protection should be ensured to children below 18" (para. 47).

4. We wish to make the following specific comments on the text of the draft optional protocol as it appears in the annex to the report of the working group.

5. We welcome the addition of preambular paragraph 6 referring to the recommendation of the 26th International Conference of the Red Cross and Red Crescent in December 1995 that parties to conflict take every feasible step to ensure that children under the age of 18 years do not take part in hostilities.

6. Draft article 1. We support the first option for draft article 1, with the deletion of "17" and "indirect", so that it would read: "States Parties shall take all feasible measures to ensure that persons who have not attained the age of 18 years do not take part in hostilities". Protection from involvement in hostilities is the fundamental purpose of the draft optional protocol. It is, therefore, essential that this article is clear, strong and in line with the recommendation referred to in preambular paragraph 6, including a specific age, which should be 18 years, and that the nature of participation in hostilities not be unduly limited.

7. Draft article 2. We welcome the total prohibition of compulsory recruitment of under 18-year-olds into governmental armed forces as stated in draft article 2.1. However, we also oppose the voluntary recruitment of those under 18 years, even with the requirements of free consent of the child and of the parents or legal guardians. In many circumstances the degree of voluntariness is seriously open to question: many forms of pressure lead young people to join armed forces and the requirement of parental or other consent is not an adequate safeguard and may be irrelevant. Secondly, the reasons for raising the minimum age to 18 years are not only associated with recruitment methods but with the physical, psychosocial and emotional impact on the young person, the teaching of military skills and attitudes and the deprivation of opportunities to develop educational and social skills more appropriate for civilian life. Thirdly, the presence of younger soldiers in the armed forces raises questions about the effectiveness of the prohibition on the participation in hostilities of those under 18 years. Although some

Governments which currently accept younger volunteers have systems intended to prevent under-18s becoming involved in hostilities, no system is foolproof. As long as these "young soldiers" are in the armed forces there will be a temptation to use them, and in any case they are liable to attack. Finally, if Governments reserve the right to recruit those under 18 years, the reality is that a ban on recruitment of under-18s by non-governmental armed groups is unlikely to be effective.

8. We are not in favour of military schools, believing that civilian schooling is in the best interests of the child. However, since the primary purpose of this draft optional protocol is to prevent recruitment into the armed forces themselves and involvement in hostilities of those below the age of 18 years, we would be willing to see a tightly drafted exception for military schools and academies in the interest of accommodating States who would not otherwise be able or willing to become parties to the protocol.

9. Draft article A. We welcome this new draft article with the deletion of the words "[of minors]", so that the prohibition is on any recruitment of under-18s into non-governmental armed groups.

10. Draft article 8. We see no reason for the number of States parties to bring this protocol into force to be greater than that for other optional protocols to human rights treaties, that is 10.

International Confederation of Free Trade Unions

[Original: English]
[4 and 9 October 1996]

1. A revised version of the ICFTU Youth Charter which will be submitted for adoption to the ICFTU Executive Board meeting at the end of November, states:

> "(1) Young people under the age of 18 or military conscripts should not take part in armed conflicts. Participation in such conflicts should also be voluntary.
>
> "(2) The weapon industry is thriving in our society, undoubtedly at the expense of children and young people being deprived from their basic human rights. Governments should shift their priorities from defence to social welfare. All weapons directly aimed at killing or mutilating civilians, including anti-personnel mines and nuclear weapons, must be banned."

2. The ICFTU also referred to an article entitled "The ordeal of the child soldiers", published in the ICFTU monthly publication FREE LABOUR WORLD (October 1996 issue, p. 3), which is available for consultation in the files of the Secretariat.

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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on involvement of children in armed
conflicts
Third session
Geneva, 20-31 January 1997

# COMMENTS ON THE REPORT OF THE WORKING GROUP

## Report of the Secretary-General

## Addendum

The present document contains comments submitted by the Government of Switzerland and by the Committee on the Rights of the Child.

GE.97-10003 (E)

## Switzerland

[Original: French]
[29 November 1996]

1. In conformity with its humanitarian tradition and as a depositary of the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, Switzerland has always devoted the greatest attention to the fate of war victims. Children are particularly exposed to the consequences of armed conflicts. First, they are very vulnerable victims, and secondly they are involved in fighting in several parts of the world. In both cases, war has devastating effects. For this reason, Switzerland is committed to ensuring that children enjoy specific protection in armed conflicts.

2. In order to reduce the suffering inflicted on children by war, their involvement in armed conflicts may be excluded. The adoption of a protocol on this question would mark a decisive contribution to this end. The draft in course of preparation raises a crucial question, namely that of the age-limit. In accordance with article 1 of the Convention on the Rights of the Child, any human being below the age of 18 years is in principle deemed to be a child. This age-limit is generally used to determine entry into adult life, it being recognized that children under the age of 18 need special protection to enable their personalities to develop fully and harmoniously. There is no reason for lowering the limit for this protection precisely in a sphere in which the rights of the child are exposed to grave danger. The involvement of children under 18 in armed conflicts affects them in the most serious manner at a decisive phase of their development. Moreover, because of their lack of experience and maturity, child soldiers represent a specific risk for their adversaries and for the civilian population. For this reason, Switzerland considers that the optional protocol should fill a gap left in the Convention and set the age-limit for the involvement of children in hostilities (art. 1 of the draft) and in recruitment (art. 2 of the draft) at 18 years.

3. Switzerland considers that no distinction should be drawn between "direct involvement" and "indirect involvement" (through the performance of auxiliary services) or between the compulsory or voluntary nature of recruitment. The optional protocol must send a clear signal with a view to the enhanced protection of the rights of the child. It must therefore take a substantial step forward in relation to article 38 of the 1989 Convention.

4. The negotiations in the Working Group have shown that the age-limit of 18 creates difficulties for various States as regards voluntary recruitment in military colleges or academies. In the opinion of Switzerland, the ways and means of resolving this question should be studied without calling into question the principle of the 18-year age-limit.

Committee on the Rights of the Child

[Original: English]
[20 December 1996]

The Committee has reiterated its views on this draft optional protocol on several previous occasions. It has in fact submitted a preliminary draft text which has constituted the basis for the drafting process of the working group, and since the inception of the latter it has reaffirmed, orally and in writing, its position in relation to the different draft provisions under discussion. The most recent contribution of the Committee is to be found in document E/CN.4/1996/102, paragraphs 35 to 47.

Reaffirming all its previous statements, the Committee would like at the present moment to stress the following:

1. The involvement in hostilities of persons below the age of 18 is harmful for them physically and psychologically and affects the full enjoyment of their fundamental rights. For this reason, persons below 18 should never be allowed to be involved in hostilities, either directly or indirectly, and a clear message to that end should be incorporated into the optional protocol.

2. States should not recruit into their armed forces persons below the age of 18, and the same principle should apply to voluntary enlistment. In fact, wherever situations of voluntary enlistment have made it possible for persons below the age of 18 to participate directly or indirectly in hostilities, reality shows that emergency situations often pave the way for the instrumentalization of children and lead to great risks for their lives.

3. Even in those situations where voluntary enlistment would be allowed, the training of such persons should incorporate and pay special attention to education on humanitarian and human rights, in the light of the Convention on the Rights of the Child and in particular of its articles 28, 29 and 42.

4. The same protection measures should be ensured to children below 18 in situations of enrolment or enlistment by non-governmental armed groups.

5. The aim of the optional protocol is to allow States parties to the Convention on the Rights of the Child which are in a position to do so, to clearly commit themselves not to recruit or to allow the participation of children below 18 years in hostilities. For this reason and in the light of its optional nature, the optional protocol should not admit any reservations.

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